IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6076 of 2007()

CRIME NO.508 OF 2007 OF CHATHANNOOR POLICE STATION

.....

: PETITIONER/3RD ACCUSED

M.MUKESH, AGED 21 YEARS,
MUNAMBIL VEEDU,AYIRAMTHUGUMN CHERI,
KOTTIKADA P.O.-691 020.
KOLLAM.

BY ADV. SRI.ALAN PAPALI
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6076 of 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. Altogether there are 3 accused persons. They face allegations for offences punishable, inter alia, under Section 308 r/w 34 I.P.C. The crux of the allegations is that the 3 accused persons came in an autorickshaw and mounted an attack on the victim/defacto complainant who was standing in front of a textile shop. The defacto complainant knew the 1st accused, but he did not know the 2nd and 3rd accused. He only stated in the F.I.R that the 1st accused and 2 others together were present in the autorickshaw in which they came to attack the defacto complainant. Dangerous weapon - sword was used for the attack. Cut injury is suffered by the victim. The injury is caused on the back of the neck also. Investigation continued. In the course of investigation, the 2nd accused was arrested. His interrogation revealed the complicity of the 3rd accused, the petitioner herein. It is alleged that all the 3 accused had shared the common intention and the overt acts were committed by the 2nd accused. There was some prior incident between the 1st accused and the defacto complaint and it is on the basis of such animosity that all the accused together mounted an attack on the defacto complainant, it is alleged. The petitioner has no criminal antecedents, submits the learned Public Prosecutor .

2. The learned counsel for the petitioner submits that at worst even if the entire allegations were accepted, all that turns out is that the petitioner also was present along with accused 1 and 2. Of course, there is an allegation that after the incident the accused persons had caused damage to the glass planes of the textile shop. But that cannot at all indicate that there was any common intention to attack the defacto complainant. The learned counsel for the petitioner, in these circumstances, submits that the petitioner may be granted anticipatory bail.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are absolutely no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. All available indications clearly suggest that the 3 miscreants had come in the autorickshaw with the obvious purpose of attacking the defacto complainant. Hairsplitting inquiry about the precise overt acts committed by the accused persons need not be resorted to at this stage when it is evident that all the 3 accused persons shared the common intention of attacking the defacto complainant. The fact that they came together; the fact that as preplanned an attack was mounted on the defacto complainant and the fact that all the 3 went away together are all sufficient indications to suggest sharing of

common intention by the petitioner also. At any rate, this is not a fit case where the invocation of the extraordinary inherent jurisdiction will be justified, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. At this early stage of investigation, I shall not embark on any detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I find merit in the opposition by the learned Public Prosecutor . I am satisfied that it will not be expedient, necessary or just to permit the petitioner to arm himself with an order of anticipatory bail at this stage of investigation. The petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-